IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.7.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(PD) No.1815 of 2002

Mari Reddy .. Petitioner

vs.

R.Mohan .. Respondent

Revision Petition filed against the order dated 1.8.2002, passed in I.A.No.47/1999 in O.S.No.296/1995, on the file of the Sub Court, Thiruvallur.

For Petitioner : M/s.N.R.Anantharamakrishnan
For Respondent : No Appearance

ORDER:

This revision petition has been filed under Sec.115 of the Code of Civil Procedure against the order dated 1.8.2002 made in I.A.No.47/1999 in O.S.No.296/1995 on the file of the Sub Court, Thiruvallur.

2. The plaintiff is the revision petitioner herein. The suit has been filed by the petitioner/plaintiff against the respondent/defendant for specific performance of the agreement of sale dated 7.6.1993 and to execute the sale deed at the costs of the plaintiff, in favour of the plaintiff in respect of the suit property after receiving the balance of sale consideration of Rs.8,000/-.

3. The petitioner/plaintiff filed an Application in I.A.No.47/1999 in the suit pending on the file of the Sub Judge, Thiruvallur under Order 6 Rule 17 of the Code of Civil Procedure for carrying out the amendment in the plaint. According to him, in the plaint in paragraph 3 in line 7, instead of saying "before" he has inadvertently added the words "as advance on". Therefore to delete the words "as advance on" and to substitute the word "before", this amendment application was filed by the plaintiff before the trial court. The said Application was resisted by the respondent. The trial court after hearing both parties dismissed the Application on the ground that the amendment changes the cause of action of the suit.

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4. Aggrieved against that order dated 1.8.2002, the above revision petition has been filed by the petitioner/plaintiff.

5. Though the notice has been served on the respondent there is no representation on behalf of them even in person or through counsel. Therefore, after hearing the learned counsel for the petitioner, I am passing the order on merits.

6. The learned counsel for the petitioner contended that the trial court has committed a grave error in dismissing the Application for amendment. It is further submitted that it was only by oversight and inadvertence the word "as advance" has been added in the plaint instead of the word "before" which is nothing but what is found in the sale agreement dated 7.6.1993. Therefore it is only to correct the anomaly, he has filed the Application for amendment and it would not certainly introduce a new cause of action as erroneously concluded by the trial court nor it will bring a new cause of action. It is only an attempt to correct the mistake in the pleadings so as to confirm the pleadings in line with the actual facts as have been set out in the amendment.

7. According to him, the trial court proceeded on a wrong premises. The amendment sought for would not certainly change the cause of action or bring in a new case.

8. Having perused the averments, pleadings and the relief sought for in the original plaint as well as in the amendment Application coupled with the sale agreement dated 7.6.1993, I am of the view that the proposed amendment is not impermissible in law. It is only a mistake which is sought to be corrected in the pleadings. Further, no prejudice would be caused to the respondent. In fact, by this clarification, the respondent/defendant will be in a better position to know the exact case of the plaintiff and proceed accordingly. Moreover, the purport of Order 6 Rule 17 of C.P.C., is that if the amendment does not change the cause of action or raise a new cause of action or a new case, it would normally be allowed. Therefore, I am of the opinion that the trial court has committed a grave error in dismissing the Application. Consequently, the order dated 1.8.2002 is set aside and the trial court is directed to permit the petitioner herein to amend the plaint as sought for in Application No.47/1999 in O.S.No.295/1995.

9. Considering the fact that the suit is of the year 1995, I direct the trial court to dispose of the suit in O.S.No.296/1995 within a period of three months from the date of receipt of a copy of this order, preferably on day-to-day basis.

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10. In the result, this Civil Revision Petition is allowed with the above direction. No costs. C.M.P.No.15411/2002 is closed.

sks

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Subordinate Judge, Sub Court, Thiruvallur.

+ one cc to Mr.N.R.Anantha Krishnan, Advocate Sr.No.30484.

AK (CO)
RSM/26.7.2006

C.R.P.(PD)1815/02.

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